COLEMAN LAW FIRM
A PROFESSIONAL CORPORATION

RONALD D. COLEMAN
DAVID STEIN (ALSO ADMITTED IN PA, IL, AND DC)

PETER S. FRIEDMAN
DAVID MARC NIEPORENT (ADMITTED IN NJ ONLY)

JANE COLEMAN - OF COUNSEL
LAWRENCE HERSH - OF COUNSEL
(ALSO ADMITTED IN CA, IL AND REGISTERED TO PRACTICE BEFORE THE U.S. PATENT AND TRADEMARK OFFICE)

1350 BROADWAY
SUITE 1212
NEW YORK, NY 10018
212-752-9500
FAX 212-752-9506

THE DIAMOND BUILDING
881 ALLWOOD ROAD
CLIFTON, NJ 07012
973-471-4010
FAX 973-471-4646

WWW.COLEMAN-FIRM.COM

January 6, 2006

VIA ELECTRONIC FILING

Honorable Michael L. Orenstein, U.S.M.J.
United States District Court
Eastern District of New York
Long Island Courthouse
100 Federal Plaza
Central Islip, NY 11722-4438

Re: S&L Vitamins v. Australian Gold
05-CV-1217 (JS) (MLO)

Dear Magistrate Judge Orenstein:

We represent S & L Vitamins and Larry Sagarin in the above-captioned matter. We write in response to defendant's January 4, 2006, letter to the Court.

As Your Honor will recall, our client purchases defendant's products from retailers and, in turn, sells those products over the Internet. S & L Vitamins' business threatens defendant's attempt to monopolize the secondary market in its products, and, therefore, defendant wants to shut down S & L's and its suppliers' operations. Essentially, the parties in this case are competitors.

Since the inception of this case, our client understandably has feared that if defendant gained access to the proprietary trade secrets of S & L Vitamins, namely its sources of product, defendant would retaliate against those sources, thereby cutting off S & L's supplies and, in turn, destroying S & L's business. In recognition of this possibility, on August 11, 2005, this Court "so ordered" a stipulated protective order "for the purpose of protecting trade secrets or other confidential commercial information, such as the identity of the supplier(s) of [S & L Vitamins], vital to the business of [S & L Vitamins]." (See paragraph 1 of the Stipulated Protective Order, a copy of which is attached to defendant's January 4, 2006, letter to the Court at Exhibit C.)

Paragraph 2 of the aforementioned stipulated protective order specifies that the identity of S & L's suppliers can only be disclosed to Australian Gold "if the production of the Designated Material reveals that one of [S & L Vitamins'] suppliers is an authorized

Dockets.Justia.com

distributor or authorized subdistributor of defendant." Paragraph 2 further states that defendant must file a motion to disclose the identity of the suppliers.

Here, the production of the Designated Material (*i.e.*, disclosure of the suppliers' identities) has not revealed that one of S & L's suppliers is an authorized distributor or authorized subdistributor of defendant, so disclosure to Australian Gold is expressly prohibited. The failures of S & L's suppliers to answer subpoenas do not somehow translate into a revelation that one of them is either a distributor or subdistributor of Australian Gold to the effect that the protective order should be cast aside, nor does it amount to a plausible basis for naming them as parties here. By all appearances, defendant has added the suppliers as subterfuge in order to circumvent the protective order and to do what it has wanted to do all along, namely, to reveal the identities of the suppliers to Australian Gold. Furthermore, defendants have not filed a motion with this Court requesting disclosure of the identities to Australian Gold so that, too, prohibits disclosure.

S & L's Complaint contends that defendant has used the judicial process as a mode of unfair competition and as a method of unfair business advantage beyond the rights afforded under the Lanham Act or any other applicable law. The conduct of this litigation so far by defendant, which has resulted in a virtual blockade of our client's legal supply of merchandise for sale, only reinforces this claim. If this Court permits defense counsel to disclose the identities of S & L Vitamins' suppliers to Australian Gold, the stipulated protective order will be rendered worthless, and defendant will have succeeded in shutting down our client's business even before an adjudication of the case on the merits could be had.

Because neither the production of Designated Material nor Your Honor's December 20, 2005, Order warrant disclosure to Australian Gold, our client requests that the identities of its suppliers remain "attorney's eyes only" and under seal. We are available at the Court's convenience should the Court have any questions concerning this response.

Respectfully submitted,

Ronald D. Coleman

cc: Francis J. Earley, Esquire (via ECF)
Scott D. Matthews, Esquire (via first class mail)